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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,581	08/22/2003	Saul Palder	P0740.70001US00 (DW)	9949
7590	06/07/2006		EXAMINER	
David Wolf Wolf, Greenfield & Sacks, P.C. 600 Atlantic Avenue Boston, MA 02210				PUROL, SARAH L
			ART UNIT	PAPER NUMBER
			3634	

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/646,581	PALDER, SAUL	
	Examiner	Art Unit	
	Sarah Purol	3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 21 February 2006.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-17 and 30-39 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-17 and 30-39 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/21/06</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Claims 1-17 and 30-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Welsh et al. 6,874,650.

To elucidate the previous rejection, Welsh et al. teach a nestable container 10 having four sidewalls flared upwardly 22,24,26,28; from a common bottom 12 with each sidewall connected to adjacent sidewalls by an inwardly fluted web extending upwardly from projection 50 towards the open top of the container (by which the container may be gripped) and located at the edges of the sidewalls. Column 2 lines 19-21 state that in one embodiment of the invention the sidewalls are NOT planar to provide several desirable features, one of which allows a person to easily pick up the container 10. Welsh et al. also clearly teach a lid 14 as well as reinforcing ribs 42 on the container itself (best seen in Figure 2).

Claims 1,2, 13, 14, 15, 16 (as best understood), 39 are rejected under 35 U.S.C. 102(b) as being anticipated by Lahm et al. D395,392. Lahm et al. disclose a nestable container having upwardly and outwardly substantially planar flared sidewalls, each sidewall is connected to an adjacent sidewall by an inwardly fluted web at the corners of the container, the corners are grippable by thumb and fingers. Note also the stepped section contiguous with the sidewalls parallel with a center axis of the container. Note also the ribs extending midway between the sides.

Claim 17, 30, 31, 32, 33,34, 35,36 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Moore. Moore teaches a stacking container having a frusto conical

Art Unit: 3634

shaped sidewall, inwardly fluted webs providing thumb and finger gripping areas from the bottom to the top and wherein the fluted webs have substantially uniform radius of curvature. "Textured surface" is met by Moore in that texture may encompass smooth, rough etc. uniform or not.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 4, 5, 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lahm et al. in view of Bostrom 3,344,974. Lahm et al discloses the invention except for the capacity and the lid. It would have been obvious to modify Lahm et al. (size) to a desired quantity of the containers contents, 1 gallon or 2 quart, 1 quart and 1 pint are typical for food containers and are desired standard sizes for quantities of food. Bostrom teaches a nestable container/lid. It would have been obvious to add the lid to keep the contents free of contamination. Note also that six encompasses four.

Claims 7, 8, 9, 10, 11, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lahm in view of Fritz 5,423,453. Lahm discloses the invention except for outwardly bowed upper edge and the lid. Fritz teaches an outwardly bowed upper edge as well as a lid. It would have been obvious in view of Fritz to outwardly bow the edges of Lahm to provide an edge resistant to forces pushing inwardly and tending to buckle the upper edge inwardly. The Fritz lid provides the teaching of a lid

(Col. 3 line 66). The material and the radius are considered matters of choice in design well within the ambit of one having ordinary skill in the art at the time of the invention.

Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moore. Although the exact radius of Moore is not disclosed it is presumed that one of ordinary skill in the art at the time of the invention would understand that size, particularly of containers is a variable choice in design depending on the volume desired to be contained.

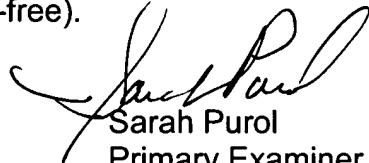
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah Purol. The examiner can normally be reached on Mon. Tue. Thurs. For general questions relating to this application please e-mail the examiner at Sarah.Purol@USPTO.GOV.

The examiner prefers e-mail to telephone correspondence whenever possible and will make every effort to answer with utmost promptness.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3634

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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